

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE: * **CASE NO. 20-00633EAG**
EFRAIN CARRERO VELEZ * **CHAPTER 13**
DEBTOR S *
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MOTION TO DELIVER FUNDS TO DEBTOR

TO THE HONORABLE COURT:

Now comes debtor through the undersigned attorney and very respectfully prays and states as follows:

I

FACTS

1. Debtor filed this case on March 11, 2020 as a chapter 13 proceeding.
2. Debtor listed as property in Schedule B an account with Banco Popular de Puerto Rico in the amount of \$156,480.16. Said account has now a balance of \$156,938.00, account number 7254
3. Said account is also in the name of debtor's former wife, Kriziamarie Perez Barber. They divorced on June 20, 2016 in case ISRF201600383.
4. In said case an order was entered directing Banco Popular de Puerto Rico to freeze said account until the issue of the liquidation of conjugal partnership as solved.
5. As of the date of the filing of this case no agreement has been reached in relation with the liquidation of conjugal partnership and no case in relation to that has been filed by either party.
6. All of debtors' scheduled debts, except child support are conjugal community debts.

II

APPLICABLE LAW

1. Pursuant to 11 USC 541 (a)2 “all interest of the debtor and the debtor’s spouse in community property as of the commencement of the case that is under the sole, equal or joint management and control of the debtor”.
2. Pursuant to 11 USC 1306 states that except as provided in a confirmed plan the debtor shall remain in possession of all property of the estate.
3. The above mentioned account is part of the bankruptcy estate in this case and the assets are under the exclusive control of debtor. This same issue was solved by this Honorable Court in Re Victoria Santiago 17-07507 and Wiscovitch V. Vargas Santiago 18-00074. In said cases this Honorable Court citing several cases ruled that the term spouse used in Section 541(a) (2)B of the Bannkrupcy Code includes a former spouse when the ex-spouses have not partitioned the property in their formal conjugal community, even if the conjugal community was terminated pre-petition. Courts addresses, the issue have that community property which has not been legally divided as of the commencement of the bankruptcy case passes to the debtors’ estate. In Re Robertson, 203 F3d 855(5th Circuit 2000).

III

PRAYER

It should be noted that debtor’s former wife is the largest unsecured creditor and she will be paid her claims in full under the proposed chapter 13 plan.

NOTICE 20 DAYS

Within (twenty)20 days after service as evidenced by the certifications and an additional (3) three days pursuant to Fed R Bank, P. 9006 (f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the clerk's office of the United States Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the court, the interest of justice requires otherwise.

WHEREFORE, it is respectfully requested from this Honorable Court that an order be entered directing Banco Popular de Puerto Rico to deliver to debtor the funds in the above mentioned account.

CERTIFICATE OF SERVICE : I HEREBY CERTIFY That on June 23, 2020 we electronically filed the foregoing using the CM/ECF system. Notice of this filing will be sent electronically through the CM/ECF System to Alejandro Oliveras, Chapter 13 Trustee, US Trustee, Monsita Lecaroz, Attorney Damaris Quinones representing creditor Kriziamarie Perez and to Kriziamarie Perez Barber, Calle Azucena 321, Puerto Real, Cabo Rojo, Puerto Rico 00623 by regular mail.

In Mayaguez, Puerto Rico, this 23rd day of June, 2020.

/s/**Alberto O. Lozada Colón**

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